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Committee on the Elimination of Racial Discrimination
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Summary record of the 2649th meeting
Held at the Palais Wilson, Geneva, on Wednesday, 8 August 2018, at 10 a.m.

Chair: Mr. Amir

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The meeting was called to order at 10 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined fourth to sixth periodic reports of Montenegro (*continued*)
(CERD/C/MNE/4-6; CERD/C/MNE/Q/4-6)

1. *At the invitation of the Chair, the delegation of Montenegro took places at the Committee table.*

2. **Ms. Mašanović** (Montenegro) said that minority languages were unofficially used in court proceedings in parts of the country where a significant proportion of the population spoke a language other than the official national language. Parties to court proceedings always had the right to address the court in their own language and were provided with accredited court interpreters where necessary.

3. Courts in Montenegro were fully independent. All citizens had an equal right to seek redress and the protection of their rights. Judges had a permanent mandate and were appointed by the Judicial Council. While the Supreme Court was the highest instance in the court system, ensuring the consistent application of laws, the Constitutional Court was a sui generis body that resolved issues of legality and constitutionality. A party that alleged the violation of human rights or freedoms by State authorities could, once it had exhausted all regular and extraordinary legal remedies, lodge an appeal with the Constitutional Court. If unsatisfied with the outcome, it could proceed to address the European Court of Human Rights. A law on the protection of the right to a fair trial within a reasonable time was applied by the regular courts and constituted an effective remedy under article 13 of the European Convention on Human Rights. Under article 5 of the Law on the Execution of Criminal Sanctions, discrimination was prohibited irrespective of whether the penalty imposed was long- or short-term imprisonment, a fine, or a stay in a psychiatric institution.

4. Detainees from minority communities had the same rights and obligations as other detainees and were informed of them in a language that they understood. Albanian and English translations of the regulations were made available to detainees who did not speak the official national language. Moreover, all persons under arrest had the right to use their own language with the help of an interpreter.

5. At the beginning of their prison sentence, all inmates were required to complete a form regarding their dietary requirements, on which they could detail any religious, cultural or health-related specificities. While in prison, they had the right to contact and receive visits from representatives of religious communities and fully exercise their religion. The prison system cooperated closely with all the minorities in Montenegro.

6. **Mr. Gjokaj** (Montenegro) said that Montenegro was a civil, multi-ethnic, multi-religious State with a good record of respecting diversity. In the 1990s, Montenegro had been an oasis of peace in the former Yugoslavia, providing shelter for those displaced by war. In 2006, all the minorities had supported the independence of Montenegro. It was currently the youngest member State of the North Atlantic Treaty Organization and a leader of the European integration process for the Western Balkans.

7. In accordance with the Constitution, minorities enjoyed an additional set of rights aside from their fundamental human rights and freedoms. As there was no generally accepted definition of "minority" that applied in every context worldwide, different terms were used in different countries. In Montenegro, the preferred term was "minority nations", as per the Law on Minority Rights and Freedoms. In accordance with that Law, "minority nations" were groups of citizens smaller in size than the prevailing population who shared common ethnic, religious or linguistic characteristics, were historically tied to Montenegro, and were motivated by a desire to express and protect an ethnic, linguistic or religious identity. In April 2017, the parliament had adopted legislative amendments that were fully in line with the recommendations of the Venice Commission and the European Commission. Significant progress in the protection of rights of minorities had recently been achieved, as confirmed by the latest European Commission country report on Montenegro. An opinion poll financed by the European Commission and implemented by the Council of

Europe and a local non-governmental organization (NGO) had revealed a statistically significant drop in the level of perceived discrimination.

8. Montenegro had a special committee that focused on the prevention of possible conflicts of interest. The Fund for Minorities received money directly from the State budget, and its funding had been considerably increased in 2018. The Centre for the Preservation and Development of Minority Cultures, established in 2009 to improve the rights of minorities and promote intercultural approaches in alignment with the fundamental values of the State, had recently been allocated increased human resources. The six minority councils in the country, representing persons from the Albanian, Bosnian, Croatian, Muslim, Roma and Serbian communities, had representatives on the board of directors of the Fund. All implementing legislation relating to the establishment of the Fund and the regulations for its allocation had been adopted. Control over the use of the Fund had been tightened to ensure that money was spent efficiently.

9. The minority councils differed from NGOs in that they were allocated certain funds every year and each one represented a particular minority. In accordance with the Law on Minority Rights and Freedoms, each minority council could file initiatives with the State or local authorities, or even with the President of Montenegro, to oppose or seek to amend laws that conflicted with the rights of their minority group. The councils could also give their opinions on school curricula, and served to facilitate communication between their minority group and State authorities. In turn, the State authorities were obliged to inform minority councils about the measures taken in response to their complaints.

10. Under legislation previously in force, a minority had been defined as a group composed of a significant proportion of the population in a given area. However, under the amendments to the Law on Minority Rights and Freedoms, a minority should constitute a minimum of 5 per cent of the population in any given local government territory. The minority language was in official use by the local government, meaning that it was used in administrative and court proceedings, in official documents and records, and on ballot papers. Signs designating streets, squares and institutions were written in the official language of the country as well as in the minority language or languages.

11. The term "affirmative action" had replaced the previously used term "positive discrimination" to refer to efforts undertaken to improve the integration of persons belonging to minority communities. As a result of such efforts, individuals from minority backgrounds might receive preferential treatment when, for example, applying to university. The political will to improve minority representation was evident: 8 of 24 members of the current Government were from minority communities. In the latest parliamentary elections, 2 of 81 seats had been won by the Bosniak party, 1 by Albanians Decisively and 1 by the Croatian Civic Initiative. Each year, the Ministry for Human and Minority Rights, in cooperation with the Human Resources Management Agency, carried out a survey on the protection of minority nations in different bodies at the national and local levels and in the judiciary.

12. Article 79 (10) of the Constitution guaranteed the proportional representation of minorities in State authorities, local government authorities and the judiciary. In accordance with the Law on Civil Servants and State Employees, State authorities must be aware of the need to properly represent minorities when appointing staff members. Minorities were represented on municipal councils; for example, a representative of the Albanian minority held a seat on the local council in the capital city, Podgorica. Likewise, in Ulcinj, where a majority of the population was Albanian, a representative of the Bosniak community had obtained a council seat by virtue of representing a minority. Legislation had been passed to ensure that names on personal and travel documents were written according to the form and orthography of the original language.

13. The Ministry of Human and Minority Rights held quarterly meetings with all NGOs, inviting them to have their say on every aspect of strategy creation, action plan drafting and implementation monitoring through an open and inclusive process. Each year, 0.5 per cent of the State budget — some 2.5 million euros — was allocated to NGOs for their participation in such projects. Minorities were seen as part of the fabric of the nation and the State was committed to fostering respect for minorities.

14. **Ms. Radošević Marović** (Montenegro) said that the Law on Prohibition of Discrimination, first adopted in 2010, had been amended in several rounds. The European Commission had, in 2017, deemed the final version to be fully aligned with European Union principles and standards. The Law provided for multiple measures of protection, including through inspections and court proceedings. It prohibited hate speech, defined as any expression of ideas, claims, information or opinions that incited or encouraged discrimination or encouraged violence against persons on grounds of their personal qualities. It also prohibited xenophobia, anti-Semitism, intolerance, discrimination and animosity towards minority groups, as well as harassment, including through the use of audio-visual devices and social networks. The Law had particularly improved the norms prohibiting racial and religious discrimination in the fields of education, employment, social protection, health care and housing. High fines were stringently imposed on all violators of the Law.

15. She said that a norm on non-discriminatory action had been introduced at the explicit request of the Ombudsman. The work conducted by the Office of the Ombudsman was regulated by the Law on the Protector of Human Rights and Freedoms and the Law on the Prohibition of Discrimination. The office and its staff enjoyed a similar level of immunity to that of members of Parliament. Strict qualification requirements were in place for the office, which was entitled to appoint staff members without obtaining prior approval from the Ministry of Finance. It was allocated a special budget which, since 2014, had been increased on a yearly basis. The Ombudsman was free to decide independently how to spend the budget. Following the amendments to the Law on the Protector of Human Rights and Freedoms, the Office had achieved status B accreditation and efforts were being made to further improve its accreditation status. Public awareness of the Office had improved, as indicated in the annual report of the Ombudsman, which had recorded a significant increase in the number of requests submitted by the public. The Office was more visible in the media and special events were organized, during which representatives from the Office travelled to different cities and met with the public.

16. Pursuant to the Law on the Protector of Human Rights and Freedoms, it was the obligation of relevant institutions, such as the police and the judiciary, to submit precise data to the Office on cases of discrimination. At present, the data could not be submitted electronically because the necessary equipment for doing so was not available. The data were submitted at the end of the calendar year in order to be integrated into the annual report of the Ombudsman that was presented to Parliament. The Office submitted its report in a timely manner and, if a government body requested data from the Office, it would be received within 15 days of the request.

17. Regular training sessions on vulnerable social groups were organized by institutions such as the police and the judiciary. Anti-discrimination curricula had been made available for such sessions and participants were required to attend six seminars and six interactive workshops, after which they would sit a test and be awarded a certificate. Particular focus was paid to Roma and other national minorities. Anti-discrimination media campaigns had also been launched in the form of radio jingles, billboards and videos.

18. **Ms. Baković** (Montenegro) said that universal birth registration for all children, regardless of whether they were born in health-care institutions or not, was a priority for the Ministry of Internal Affairs. Laws governing birth registration stipulated that the birth of a child in a health-care institution must be registered immediately without exception, and that the registration of a child born outside a health-care institution must be undertaken within 30 days of the birth of the child. Following the adoption of amendments to the Law on Extra-judicial Procedure in 2015, a procedure had been established to determine the time and place of birth of persons not registered in the birth registry, thereby resolving a number of complex cases of birth registration. Brochures, which explained how to register the birth of a child in four steps, had been designed with the support of the United Nations High Commissioner for Refugees (UNHCR) and had been translated into Albanian and Romani. Moreover, all children born in health-care institutions received a baby box containing essential items for newborns.

19. In accordance with the Family Law, children who had been abandoned or abused by their parents were officially registered and protected by the State. With regard to internally

displaced persons (IDPs), persons from Kosovo residing in Montenegro prior to the dissolution of the Federal Republic of Yugoslavia were considered IDPs because they had not crossed internationally recognized borders. The adoption of the Law on Amendments to the Law on Foreigners in 2009 had resolved the problems linked to the legal status of IDPs. The deadline for submitting an application to regulate a person's legal status had been set at two years from the adoption of the above-mentioned amendments to the law but had been extended for Kosovan IDPs until the end of 2014. Upon becoming permanent residents, IDPs were able to enjoy the right to work, education, social welfare and health insurance, among others.

20. Montenegro had signed an agreement with Kosovo to resolve the obstacles faced by Kosovans residing in Montenegro when registering the birth of their children. Mobile teams had been established in both countries and 14 visits to Montenegro had been conducted by the teams working in Kosovo. Almost 1,500 IDPs had benefited from the service and over 1,000 had obtained Kosovan citizenship, which allowed them to apply for permanent residency in Montenegro. Administrative fees for obtaining official identity documents had been reduced for such persons thanks to financial support from UNHCR. Only a small number of IDPs displaced during the Yugoslav wars had a temporary residence permit. The permit was valid for three years, which allowed such persons enough time to obtain a passport from their country of origin. In addition, the application for permanent residency could be started even if the individual had only unofficial documents available. At present, there remained 100 outstanding permanent residency applications by such IDPs, although their cases were very complex. For that reason, a team had been set up with the support of UNHCR to visit the communities and individuals affected in order to assess how to resolve their cases.

21. The issue of statelessness had been primarily resolved in Montenegro following the adoption of amendments to the Law on Extra-judicial Procedure, which had clarified the legal status of children born to stateless parents. Efforts were also being made to assist such parents in obtaining identity documents. The Public Invitation held in 2014 in cooperation with UNHCR and the Organization for Security and Cooperation in Europe (OSCE) had also significantly contributed to improving data collection and reducing cases of statelessness. The revised Law on Foreigners defined statelessness and provided for travel documents to be issued to stateless persons with a validity of one year. Although not all of the accompanying by-laws to the Law on Foreigners had been adopted, the Law had entered into force and was being implemented.

22. **Mr. Beganaj** (Montenegro) said that national demographic statistics did not include ethnic groups with fewer than 100 persons, which is why no reference had been made to the Ashkali. Nonetheless, they enjoyed the same rights as Roma and Egyptians. He explained that the term *tzigane* was derogatory and that such persons were therefore referred to as Roma. The Strategy for the Social Inclusion of Roma and Egyptians in Montenegro (2016–2020) was aimed at improving the position of such persons in society. All relevant State bodies and NGOs had been involved in the development of the Strategy and the Government had also appointed a commission coordinator responsible for its implementation.

23. A number of measures had been taken to incentivize education among the Roma population. Preschool was free of charge for all Roma, as was their transport by bus to school and their textbooks. The Government focused particularly on those children in their final year of primary school in order to encourage them to continue their secondary education. Almost 2,000 Roma had attended school in the previous year and there had been no dropouts recorded in five municipalities. Awareness-raising visits had been made to Roma communities and the Government offered scholarships to Roma students in secondary school and in university. There were at present two Roma persons studying for a master's degree and all Roma with a university degree were in employment.

24. Awareness-raising workshops on the topic of employment were held for Roma and Egyptians. In 2017, over 100 Roma and Egyptians, 40 per cent of whom were women, had been involved in the Active Employment Policy Programme. Training programmes were also available for those working in tourism, construction, gardening and crafts, some of which had been attended by Roma men and women.

25. **Ms. Đukanović** (Montenegro) said that to tackle the problem of segregation, the Government had implemented a social housing programme that provided housing units for both Roma and non-Roma individuals and families, which promoted coexistence between communities. In addition, 178 housing units had been built in Podgorica for refugees from Kosovo, mostly Roma and Egyptians. The Government believed that the programme was yielding positive outcomes and planned to continue its efforts to address segregation and foster the integration of Roma and other communities.

26. **Mr. Šofranac** (Montenegro), referring to the Government's efforts on behalf of internally displaced persons, refugees and asylum seekers, and to their integration, said that in 2009 the Government had carried out a re-registration exercise to determine how many internally displaced persons from Kosovo were still in Montenegro. The exercise had yielded the information that 2,900 Roma, among others, were in the country. Of that figure, an estimated 1,500–1,600 had been provided with housing, while 500 had voluntarily returned to Kosovo. As a result, it appeared that many of the problems facing that vulnerable category of persons had been resolved. He also recalled that government ministries, together with the Office of the United Nations High Commissioner for Refugees (UNHCR), had conducted numerous field visits to municipalities in order to facilitate the provision of official documents, including birth certificates, to enable displaced persons from Kosovo to remain in Montenegro if they so wished. Although many individuals had resolved their status in Montenegro, some had abused the goodwill shown by their host country, seeking to exercise rights in their country of origin while benefiting from the assistance of international organizations.

27. The new Law on the International and Temporary Protection of Foreigners assigned responsibilities, established rules and provided for activities relating to refugees and asylum seekers. In keeping with Law, the Directorate for Care of Refugees was engaged in activities to provide free legal aid, to ensure the exercise of rights, and to provide accommodation, financial assistance and assistance with education. The Government issued a bulletin for asylum seekers that informed them about their rights and responsibilities and it was conducting a feasibility study on the accommodation and rehabilitation of unaccompanied juvenile asylum seekers and other vulnerable groups.

28. **Ms. Klikovac** (Montenegro), speaking in relation to health care for the Roma, Ashkali and Egyptian population, said that contraceptives were provided free of charge for all women in Montenegro, and were available through a public-private partnership that the Government had established with pharmacies. The Law on Health Care did not distinguish between citizens and non-citizens, so that health-care services were provided for the whole population. Lastly, she pointed out that the Ministry of Health, in cooperation with the Ministry of Human and Minority Rights, had taken steps to raise awareness among Roma about the importance of preventive health check-ups.

The meeting was suspended at 11.30 a.m. and resumed at 11.45 a.m.

29. **Mr. Cali Tzay** said that he would be grateful for clarification of the head of delegation's comments about legal assistance and the circumstances in which it was provided. He welcomed the information provided about the prison population and the representation of minorities in governmental institutions. In that regard, while noting that Roma were represented in the national Government, the Committee remained concerned by certain reports, including that of the European Commission against Racism and Intolerance, which suggested that "due to the negative perception of Roma and prejudice deeply rooted in society, the reluctance in employing Roma persists, and even Roma holding university degrees are offered only unskilled employment." Therefore, he would be grateful for a comment on the Commission's findings, including the recommendation that policies should focus on recruiting a proportionate number of Roma as civil servants to ensure an adequate representation of well-educated Roma, considering that only three Roma persons were employed as civil servants and only 13 were employed by municipalities.

30. Lastly, he asked what was being done to improve public awareness of the Protector of Human Rights and Freedoms, in the light of a report from the non-governmental organization Centre for Democracy and Human Rights that less than a quarter of the

population were aware of their rights, which made it harder for victims of discrimination to approach the institution.

31. **Mr. Kut** said that in his view, the State party ought to streamline its statistical categories of national affiliation, religion and language, as used in paragraphs 3, 4 and 5 of the report, respectively. For example, paragraph 3 referred to "Bosniaks", "Bosnians" and "Muslims/Bosniaks", presumably all of whom were Muslims, as well as "Muslims" as a separate category. Similarly, it was unclear why the category "Islamic", rather than "Muslims", was used in paragraph 4, or why there was a separate category of "Christians" in addition to those of "Orthodox", "Catholic" and "Protestant". Paragraph 5 was even more confusing, referring to near-identical language categories such as "Bosnian" and "Bosniak"; "Montenegrin/Serbian", "Serbo-Montenegrin" and "Serbian/Montenegrin"; and "Serbian-Croatian", "Serbo/Croatian" and "Croatian/Serbian". Given that the figures provided did not seem to add up and the categories adopted made little sense to an outsider, he asked the delegation to explain the system of statistics used by the State party.

32. **Mr. Avtonomov** said that he was interested to know whether Montenegro planned to ratify the International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189), which was a step that the Committee often recommended because domestic workers were usually women originating in other countries who were vulnerable to discrimination. He was also interested to know whether Montenegro planned to ratify the amendment to article 8 of the Convention.

33. Considering that the Ashkali community in Montenegro was very small, he wished to highlight that they nevertheless had very specific cultural and other needs: for example, their language was not a Romani language, as the report seemed to indicate. Therefore, in the knowledge that small ethnic groups were particularly vulnerable to discrimination and required special attention, he asked what special measures the State party was taking to prevent discrimination against the Ashkali.

34. **Mr. Murillo Martínez** said that it was commendable that affirmative action measures were being taken in the spheres of political participation and education for the inclusion of minority groups. He also welcomed the Government's cooperation with non-governmental organizations, its policies to care for the refugee population and its actions to address statelessness, among other aspects. Nevertheless, further details might be provided about the principle of the reversal of the burden of proof, which he understood was not applied by the courts in civil or labour proceedings. Did the State party plan to amend its laws to incorporate the principle? While he appreciated the Government's efforts to provide training in the area of anti-discrimination legislation, he would be grateful for information on the population groups covered and the impact of the training. Lastly, he asked for information about the inclusion of ecology as a key component of the constitutional framework of Montenegro, and how, in practice, that ecological focus had helped the country in addressing the enormous challenge of climate change.

35. **Ms. Izsák-Ndiaye**, thanking the delegation for the detailed information provided at the session and in the periodic report, said that she acknowledged the significance of the Law on Minority Rights and Freedoms having been amended in line with the recommendations of the European Commission for Democracy through Law (the Venice Commission). She welcomed the fact that the Government had solved the issue of conflicts of interest concerning the distribution of funds. Regarding the survey on discrimination, she would like to know what method was used; who was responsible; whether participation was anonymous; whether participation was mandatory for public officials; what data were available; how the Government followed-up on the results; and how it was ensured that members of minority groups were able to access decision-making positions.

36. **Ms. Mašanović** (Montenegro) said that, regarding the right to trial, any physical persons who could not afford to take part in court proceedings without putting undue financial pressure on themselves or their family could request legal aid, which included funds for legal counsel and court representation. Those receiving legal aid were excused from the obligation to pay court taxes. With respect to prison statistics, 1,065 people were incarcerated in the country, of whom 189 were members of ethnic minorities.

37. **Mr. Gjokaj** (Montenegro) said that, when responding to the 2011 census, all citizens had been free to decide and declare their own nationality, religion or other affiliation. Citizens could claim more than one ethnic or religious identity. The wording of the census made a distinction between ethnic Muslims and those of Islamic faith; around 20,000 people had declared themselves ethnically Muslim and 100,000 had declared themselves of Islamic faith.

38. Language was a complex issue in the country owing to the political history of the region. According to the constitution, Montenegrin was the official language but several other languages were used for official purposes.

39. The representation of minorities in administration was an essential factor for integration and for eliminating discrimination. When applying for a vacancy in the administration, candidates could choose whether to declare their origin. No applicant had complained about that system.

40. The surveys were commissioned by the Government and conducted in conjunction with the human resources agency. The data were published and the results were used to encourage heads of State institutions and administration to work towards the proportional representation of minority groups. For example, Ashkali applicants would be favoured over applicants from ethnic groups that were already better represented in Government. The surveys were comprehensive and covered all State institutions, including the police force and social protection and welfare institutions. A further survey was planned for September 2018, the results of which would be compared with those from the 2011 and 2015 surveys.

41. It was much easier for individuals from minority backgrounds to enrol in university; every minority candidate had been accepted into university. Although the number of Roma graduates had increased, it remained low. However, the Government had committed to ensuring that all Roma graduates found employment and at that time none were registered as unemployed. Great efforts had been made to ensure that their Roma and Egyptian peoples were well qualified and could compete in the labour market; per capita government spending was highest for Roma communities.

42. The recommendations of international institutions as well as comments from civil society and minority groups had been taken into consideration in the drafting of the Law on Amendments to the Law on Minority Rights and Freedoms, which had reformed the Fund for the Protection and Realization of Minority Rights. Significant efforts had been made to anticipate and minimize conflicts of interest in the allocation of funds, with the introduction of new procedures in particular. The members of the Fund's board of directors were chosen by Parliament.

43. **Ms. Radošević Marović** (Montenegro), replying to the question about the concept of an "ecological state", said that environmental protection based on the principles of sustainable development was vitally important. The Environmental Protection Strategy had been adopted with the main goal of raising awareness of the importance of environmental protection. A rich diversity of flora and fauna existed in the country and the Government was committed to maintaining biodiversity.

44. The initial survey on discrimination in Montenegrin society had been carried out in 2010 following the adoption of the first Law on Prohibition of Discrimination. Further surveys had been conducted every two years, the results of which were used to ascertain the effectiveness of government measures to reduce discrimination. The surveys were conducted by research agencies that were selected by an independent commission through a bid and tender process. Experts had developed a standardized questionnaire for the surveys with the support of the Organization for Security and Cooperation in Europe Mission to Montenegro. The questionnaire allowed for data from different years to be compared reliably and used to devise protection policies. The results of the most recent survey had shown some improvement with regard to discrimination against Roma people.

45. **Ms. Chung** (Country Rappporteur) asked why the number of reports submitted by NGOs decreased each time the State party appeared before the Committee.

46. **Ms. Radošević Marović** (Montenegro) said that the Government did not adopt any legal act, strategy or regulation without consulting NGOs. Furthermore, government

officials had collaborated with NGOs in the drafting of periodic reports for other United Nations treaty bodies. However, there had been a lack of interest on their part in participating in the activities leading up to the meeting.

47. **Ms. Chung**, thanking the Government for its excellent report and sincere replies to the Committee's questions, said that the Committee appreciated the fruitful dialogue that had taken place. It particularly appreciated the Government having maintained an open-door policy for asylum seekers, despite their growing numbers. She looked forward to the timely submission of the Government's next periodic report.

48. **Ms. Radošević Marović** (Montenegro), thanking the Committee members for their questions, said that the Government would work towards the implementation of the Committee's recommendations.

The meeting rose at 12.35 p.m.